

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**DAN C. POWELL AND LISA M.  
POWELL,**

**Defendants.**

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**Civil No. 5:18-cv-00040**

**UNITED STATES OF AMERICA’S COMPLAINT**

Plaintiff, the United States of America, pursuant to 26 U.S.C. §§ 7401 and 7403, at the direction of the Attorney General of the United States or his delegate, and at the request of the Secretary of the Treasury or his delegate, files this complaint to (1) reduce to judgment unpaid federal income tax liabilities of defendant Dan C. Powell for tax years 2008, 2009, 2010, 2011, 2012 and 2013 and unpaid federal income tax liabilities of Lisa M. Powell for tax years 2008, 2009, 2010 and 2012; (2) foreclose federal tax liens against, and sell property located in Bexar County, Texas owned by the defendants; and (3) obtain, if appropriate, the 10% surcharge available under subchapter B or C of the federal Collections Procedure Act.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction of this action pursuant to 26 U.S.C. §§ 7402(a) and 7403(c) and 28 U.S.C. §§ 1340 and 1345.

2. Venue lies with this Court pursuant to 28 U.S.C. §§ 1391(b) and 1396 because defendants reside, and the property that is the subject of this action is located, in Bexar County, Texas.

### **PARTIES**

3. Plaintiff is the United States of America (“the United States”).

4. Defendants Dan C. Powell and Lisa M. Powell, reside in Bexar County, Texas, and may be served at their residence.

### **COUNT I**

#### **Joint and Several Tax Liabilities of Defendants For 2008, 2009, 2010, and 2012**

5. Dan C. Powell and Lisa M. Powell late filed original or amended joint federal income tax returns for 2008, 2009, 2010 and 2012.

6. A delegate of the Secretary of the Treasury jointly assessed against defendants Don C. Powell and Lisa M. Powell income (Form 1040) taxes, penalties, interest, and statutory additions on the dates and for the periods as follows:

<b>Tax Year</b>	<b>Date of Assessment</b>	<b>Income Tax</b>	<b>Penalty, Statutory Additions</b>	<b>Interest Assessed</b>	<b>Balance of Assessed and Unassessed on 09/04/2017</b>
2008	03/21/2016	123,086.00	30,771.50	31,851.03	\$ 196,786.24
2009	03/21/2016	113,192.00	25,798.00	21,610.09	\$ 159,583.54
2010	03/21/2016	111,661.00	27,915.25	18,409.02	\$ 167,409.26
2012	01/17/2017	145,088.00	56,331.30	18,272.64	\$ 39,775.15
	Total				\$ 563,554.19

7. Despite notice and demand for payment, as of September 4, 2017, Dan C. Powell and Lisa M. Powell jointly and severally owe assessed taxes, penalties and interest of \$563,544.19, for tax years 2008, 2009, 2010 and 2012.

8. Dan C. Powell and Lisa M. Powell jointly and severally owe accruing but unassessed penalties and interest for 2008, 2009, 2010 and 2012, from the dates of assessments until paid.

## COUNT II

### Separate Tax Liability of Dan C. Powell For 2011 and 2013

9. Dan C. Powell failed to file federal income tax returns for 2011 and 2013.

10. After an examination of both years, the Internal Revenue Service assessed Dan C. Powell federal income tax liabilities, penalties and interest on January 16, 2017.

11. The following chart reflects the amounts of assessed tax, interest and penalties as of the dates noted.

<b>Tax Year</b>	<b>Date Assessed</b>	<b>Assessed Income Tax</b>	<b>Assessed Penalty, Statutory Additions</b>	<b>Interest Assessed</b>	<b>Total Unpaid Assessed Amount due as of 9/4/2017</b>	<b>Total Unpaid Assessed and Accrued as of 9/4/2017</b>
2011	01/16/2017	61,952.00	30,653.69	12,332.24	104,937.93	\$107,628.20
2013	01/16/2017	34,731.68	5,897.11	1,669.16	21,929.27	\$ 23,425.05
	Total					\$131,053.25

12. Despite notice and demand for payment, as of September 4, 2017, Dan C. Powell owes assessed and unassessed tax, penalty and interest of \$131,053.25 for 2011 and 2013.

13. Dan C. Powell also owes accruing but unassessed penalties and interest for 2011 and 2013 from the dates of the assessments until paid.

### **COUNT III**

#### **Enforcement of Tax Liens**

14. Defendants are the owners of certain real property located at 206 Yosemite Drive, San Antonio, Texas (“the Property”), more specifically described as:

Lot 10, Block 1, Hollywood Estates, Unit 5, City of Hollywood Park, an addition in Bexar County, Texas according to the map or plat thereof, recorded in Volume 3140, Page 174, Deed and Plat Records of Bexar County, Texas.

15. At the time of each of the above described assessments, a federal tax lien arose, pursuant to 26 U.S.C. § 6321, in the amount of the assessments plus accruing interest, penalties and statutory additions; and attached to all property or rights to property then owned, or thereafter acquired, by defendants Dan C. Powell and Lisa M. Powell.

16. The United States recorded a Notice of Federal Tax Liens against defendants Dan C. Powell and Lisa M. Powell pursuant to 26 U.S.C. § 6323 with respect to the above described assessments for tax years 2008, 2009 and 2010 in the real property records of Bexar County, Texas, on July 20, 2016.

17. The United States recorded a Notice of Federal Tax Lien against defendant Dan C. Powell pursuant to 26 U.S.C. § 6323 with respect to the above described assessments for tax years 2011, 2012 and 2013 in the real property records of Bexar County, Texas, on February 15, 2017.

18. On information and belief, there are no other liens against the Property.

19. On information and belief, the Property has a value of approximately \$417,000.

20. As the tax assessments remain unpaid, the United States is entitled to have the federal tax liens foreclosed against defendants Dan C. Powell's and Lisa M. Powell's interest in the real property described above. Additionally, that real property should be ordered sold free and clear of any rights, titles, liens, claims, or interests of any of the parties to this action with the proceeds of the sale being paid first to the costs of the sale and then to the parties in the order of their priority of interest in the property.

#### **COUNT IV**

##### **Federal Debt Collection Procedure Act**

21. 28 U.S.C. § 3011 authorizes the United States to recover a surcharge of 10% of the amount of the debt in the event the United States avails itself of the pre-judgment or post judgment relief as set forth in Subchapter B or C of the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001 *et. seq.*, in order to cover the cost of processing and handling the litigation and enforcement under this chapter of the claim for such debt.

#### **PRAYER**

For these reasons, the United States requests that:

- a. The Court enter a judgment for federal income taxes in favor of the United States and jointly and severally against Dan C. Powell and Lisa M. Powell, for tax periods ending in December 31, 2008, December 31, 2009, December 31, 2010 and December 31, 2012, in the assessed amount of \$519,692.84, as of September 4, 2017, plus prejudgment and post judgment interest on that amount

from September 4, 2017, at the rates set forth in 26 U.S.C. §§ 6601, 6621 and 28 U.S.C. § 1961 until paid;

- b. The Court enter a judgment for federal income taxes in favor of the United States and against Dan C. Powell, for tax periods ending December 31, 2011, and December 31, 2013, in the assessed amount of \$126,867.20, as of September 4, 2017, plus prejudgment and post judgment interest on that amount from September 4, 2017, at the rates set forth in 26 U.S.C. §§ 6601, 6621 and 28 U.S.C. § 1961 until paid;
- c. Determine that the United States has valid and subsisting federal tax liens that arose with the assessments described above, and attached to all of the property and rights to property of defendants Dan C. Powell and Lisa M. Powell, including each defendant's interest in the Property;
- d. Determine the priority of the interests of the parties in the Property;
- e. Order that the United States' federal tax liens be foreclosed upon the Property, that the Property be sold free and clear of any rights, titles, liens, claims, or interests of any of the parties to this action, and that the net proceeds of the sale be distributed in the order of the priority of interest in the Property;
- f. Order that, if the amounts distributed to the United States from the net proceeds of the sale of the Property are insufficient to satisfy fully the above-described tax liabilities, the United States have judgment for the deficiency against defendants Dan C. Powell and Lisa M. Powell; and

- g. Award the United States such other and further relief as this Court deems just and proper, including judgment for an amount equal to its costs incurred in this action and for any surcharge authorized by 28 U.S.C. § 3011.

JOHN F. BASH  
United States Attorney

/s/ Joseph A. Pitzinger, III  
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ATTORNEYS FOR THE UNITED STATES

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorney for U.S.: Joseph A. Pitzinger, III, U.S. Dept. of Justice, Tax  
Division, 717 N. Harwood Street, Suite 400, Dallas, Texas 75201;  
(214) 880-972

**DEFENDANTS**

DAN C. POWELL AND LISA M. POWELL

County of Residence of First Listed Defendant Bexar  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

26 U.S.C. Section 7403.

Brief description of cause:

To reduce to judgment unpaid federal tax liabilities, foreclose and sale property and obtain 10% surcharge.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$

UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

01/12/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joseph A. Pitzinger, III

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.